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STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
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BY Sara Pasos ANALYST

8 **BEFORE THE**
9 **PHYSICIAN ASSISTANT BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 950-2017-001478

13 **MARK H. JAMALI-ASHTIANI, P.A.**
14 **1187 Coast Village Road #263**
Montecito, CA 93108
Physician Assistant No. 16291

FIRST AMENDED ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Maureen L. Forsyth (Complainant) brings this First Amended Accusation solely in
20 her official capacity as the Executive Officer of the Physician Assistant Board, Department of
21 Consumer Affairs.

22 2. On or about January 24, 2002, the Physician Assistant Board issued Physician
23 Assistant Number 16291 to MARK H. JAMALI-ASHTIANI, P.A. (Respondent). The Physician
24 Assistant license was in full force and effect at all times relevant to the charges brought herein
25 and will expire on April 30, 2021, unless renewed.

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JURISDICTION

3. This First Amended Accusation is brought before the Board under the authority of the following provisions of the California Business and Professions Code (Code) unless otherwise indicated.

4. Section 3527 of the Code states:

"(a) The board may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon a physician assistant license after a hearing as required in Section 3528 for unprofessional conduct that includes, but is not limited to, a violation of this chapter, a violation of the Medical Practice Act, or a violation of the regulations adopted by the board or the Medical Board of California.

"...

"(f) The board may order the licensee to pay the costs of monitoring the probationary conditions imposed on the license.

"(g) The expiration, cancellation, forfeiture, or suspension of a physician assistant license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

5. California Code of Regulations, title 16, section 1399.521 states:

"In addition to the grounds set forth in section 3527, subdivision (a), of the Code, the board may deny, issue subject to terms and conditions, suspend, revoke or place on probation a physician assistant for the following causes: (a) Any violation of the State Medical Practice Act which would constitute unprofessional conduct for a physician and surgeon..."

6. California Code of Regulations, title 16, section 1399.540 states in pertinent part:

"(a) A physician assistant may only provide those services....which are delegated in writing by a supervising physician...."

1 (b) The writing which delegates the medical services shall be known as the delegation of
2 services agreement..."

3 7. Section 2227 of the Code states:

4 "(a) A licensee whose matter has been heard by an administrative law judge of the Medical
5 Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default
6 has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary
7 action with the board, may, in accordance with the provisions of this chapter:

8 "(1) Have his or her license revoked upon order of the board.

9 "(2) Have his or her right to practice suspended for a period not to exceed one year upon
10 order of the board.

11 "(3) Be placed on probation and be required to pay the costs of probation monitoring upon
12 order of the board.

13 "(4) Be publicly reprimanded by the board. The public reprimand may include a
14 requirement that the licensee complete relevant educational courses approved by the board.

15 "(5) Have any other action taken in relation to discipline as part of an order of probation, as
16 the board or an administrative law judge may deem proper.

17 "(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical
18 review or advisory conferences, professional competency examinations, continuing education
19 activities, and cost reimbursement associated therewith that are agreed to with the board and
20 successfully completed by the licensee, or other matters made confidential or privileged by
21 existing law, is deemed public, and shall be made available to the public by the board pursuant to
22 Section 803.1."

23 8. Section 2234 of the Code, states:

24 "The board shall take action against any licensee who is charged with unprofessional
25 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is
26 not limited to, the following:

27 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
28 violation of, or conspiring to violate any provision of this chapter.

1 "(b) Gross negligence.

2 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or
3 omissions. An initial negligent act or omission followed by a separate and distinct departure from
4 the applicable standard of care shall constitute repeated negligent acts.

5 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate
6 for that negligent diagnosis of the patient shall constitute a single negligent act.

7 "(2) When the standard of care requires a change in the diagnosis, act, or omission that
8 constitutes the negligent act described in paragraph (1), including, but not limited to, a
9 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the
10 applicable standard of care, each departure constitutes a separate and distinct breach of the
11 standard of care.

12 "(d) Incompetence.

13 "(e) The commission of any act involving dishonesty or corruption which is substantially
14 related to the qualifications, functions, or duties of a physician and surgeon.

15 "(f) Any action or conduct which would have warranted the denial of a certificate.

16 "(g) The practice of medicine from this state into another state or country without meeting
17 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not
18 apply to this subdivision. This subdivision shall become operative upon the implementation of
19 the proposed registration program described in Section 2052.5.

20 "(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
21 participate in an interview by the board of the certificate holder and the board. This subdivision
22 shall only apply to a certificate holder who is the subject of an investigation by the board."

23 9. Section 3502 of the Code states in pertinent part:

24 "(a) Notwithstanding any other law, a physician assistant may perform those medical
25 services as set forth by the regulations adopted under this chapter when the services are rendered
26 under the supervision of a licensed physician and surgeon who is not subject to a disciplinary
27 condition imposed by the Medical Board of California prohibiting that supervision or prohibiting
28

1 the employment of a physician and surgeon who is responsible for the supervision of the
2 physican assistant.”

3 “...”

4 10. Section 3502.1, subdivision (c)(2) of the Code states:

5 “A physician assistant shall not administer, provide or issue a drug order for a drug other
6 than for a drug listed in the formulary without advance approval by a supervising physician and
7 surgeon for the particular patient.”

8 11. Section 2239 of the Code states:

9 “(a) The use or prescribing for or administering to himself or herself, of any controlled
10 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
11 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
12 any other person or to the public, or to the extent that such use impairs the ability of the licensee
13 to practice medicine safely or more than one misdemeanor or any felony involving the use,
14 consumption, or self-administration of any of the substances referred to in this section, or any
15 combination thereof, constitutes unprofessional conduct. The record of the conviction is
16 conclusive evidence of such unprofessional conduct.

17 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
18 deemed to be a conviction within the meaning of this section. The Medical Board may order
19 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the
20 denial of the license when the time for appeal has elapsed or the judgment of conviction has been
21 affirmed on appeal or when an order granting probation is made suspending imposition of
22 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
23 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,
24 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
25 indictment.”

26 12. Section 490 of the Code states:

27 “(a) In addition to any other action that a board is permitted to take against a licensee, a
28 board may suspend or revoke a license on the ground that the licensee has been convicted of a

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

3 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
4 discipline a licensee for conviction of a crime that is independent of the authority granted under
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
6 of the business or profession for which the licensee's license was issued.

7 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. Any action that a board is permitted to take
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
11 made suspending the imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code.

13 “(d) The Legislature hereby finds and declares that the application of this section has been
14 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
15 554, and that the holding in that case has placed a significant number of statutes and regulations
16 in question, resulting in potential harm to the consumers of California from licensees who have
17 been convicted of crimes. Therefore, the Legislature finds and declares that this section
18 establishes an independent basis for a board to impose discipline upon a licensee, and that the
19 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
20 to, but rather are declaratory of, existing law.”

21 13. Section 493 of the Code states:

22 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
23 the department pursuant to law to deny an application for a license or to suspend or revoke a
24 license or otherwise take disciplinary action against a person who holds a license, upon the
25 ground that the applicant or the licensee has been convicted of a crime substantially related to the
26 qualifications, functions, and duties of the licensee in question, the record of conviction of the
27 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
28 and the board may inquire into the circumstances surrounding the commission of the crime in

1 order to fix the degree of discipline or to determine if the conviction is substantially related to the
2 qualifications, functions, and duties of the licensee in question.

3 “...”

4 14. California Code of Regulations, title 16, Section 1360 states:

5 “For the purposes of denial, suspension or revocation of a license, certificate or permit
6 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall be
7 considered to be substantially related to the qualifications, functions or duties of a person holding
8 a license, certificate or permit under the Medical Practice Act if to a substantial degree it
9 evidences present or potential unfitness of a person holding a license, certificate or permit to
10 perform the functions authorized by the license, certificate or permit in a manner consistent with
11 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
12 following: Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
13 violation of, or conspiring to violate any provision of the Medical Practice Act.”

14 15. Section 125.3 of the Code states, in pertinent part, that the Board may request the
15 administrative law judge to direct a licensee found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Providing Medical Services Without Adequate Supervision)**

20 16. Respondent is subject to disciplinary action under California Code of Regulations,
21 title 16, section 1399.540, and section 3502, subdivision (a) of the Code in that he provided
22 medical services without a written delegation of services agreement. The circumstances are as
23 follows:

24 A. On or about June 29, 2017, during a Medical Board (Board) investigation,
25 Respondent informed a Board investigator that he [Respondent] has worked as a Physician's
26 Assistant (P.A.), since 2007, for Dr. R.S., who is Respondent's supervising physician.
27 Respondent also informed the Board investigator that he [Respondent] does not have a written
28 delegation of services agreement with Dr. R.S., but that it is a verbal delegation of services

1 agreement that Respondent will provide medical services/treatment to patients, including
2 prescribing medications to patients, primarily worker's compensation patients.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Administration of Controlled Substances Without Adequate Advance Approval By a
Supervising Physician)**

5 17. By reason of the facts set forth in the First Cause for Discipline, Respondent is
6 subject to disciplinary action under section 3502.1, subdivision (c)(2) of the Code for
7 prescribing/administering controlled substances without adequate advance approval by a
8 supervising physician.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Conviction of Crime)**

11 18. Respondent is subject to disciplinary action under sections 490 and 493 of the Code,
12 in that he was convicted of a crime substantially related to the qualifications, functions or duties
13 of a physician's assistant. The circumstances are as follows:

14 19. On or about June 28, 2018, in the case entitled *People of the State of California v.*
15 *Mark Hasan Jamali, et. al.*, Santa Barbara County Superior Court Case No. 18CR80019,
16 Respondent was charged with violating California Health & Safety Code section 11350(a)
17 (Possession of a Controlled Substance).

18 20. After a plea to said criminal charge, on April 8, 2019 Respondent was convicted and
19 sentenced via an Order Granting Deferred Entry of Judgment with terms and conditions, and
20 payment of fees/fines.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 21. By reason of the facts set forth in the First, Second, and Third Causes for Discipline,
4 Respondent is subject to disciplinary action under section 2234, subdivision (a), of the Code, as
5 well as under California Code of Regulations, title 16, section 1399.521, for working as a
6 Physician Assistant and providing medical services to patients without a written delegation of
7 services agreement, as well as for being convicted of being in possession of a controlled
8 substance.

9 **PRAYER**


10 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Physician Assistant Board issue a decision:

12 1. Revoking or suspending Physician Assistant License Number 16291, issued to Mark
13 Jamali-Ashtiani, PA;

14 2. Ordering Mark Jamali-Ashtiani, P.A. to pay the Physician Assistant Board the costs
15 of probation (if placed on probation), and the costs of investigation and enforcement, pursuant to
16 Business and Professions Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.

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23 DATED: July 19, 2019


MAUREEN L. FORSYTH
Executive Officer
Physician Assistant Board
Department of Consumer Affairs
State of California
Complainant

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